

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
ViaTalk, LLC) File No. EB-TCD-21-00032021
Informal Complaint Regarding)
Access to Telecommunications Services)

ORDER

Adopted: August 17, 2021

Released: August 18, 2021

By the Commission:

I. INTRODUCTION

1. In this Order, we consider an informal complaint alleging that ViaTalk, LLC (ViaTalk or Company), an interconnected VoIP service provider, failed to comply with sections 255 and 716 of the Communications Act, as amended (the Act), and section 6.11 of the Commission's rules. Sections 255 and 716 promote accessibility to telecommunications and advanced communications services, respectively, by individuals with disabilities.

2. We conclude that ViaTalk did not fulfill its obligation to ensure that individuals with disabilities have access to information it provides to its customers, namely product support communications, as required by section 6.11(a) of the Commission's rules.

II. BACKGROUND

A. Legal Background

3. Interrelated, though distinct, provisions in the Act impose obligations on manufacturers and service providers regarding the accessibility and usability of communications products and services by individuals with disabilities. Section 255 was intended to improve access to telecommunications

1 ViaTalk is a division of HostRocket.Com, Inc. that provides phone service that uses the VoIP (voice over internet) telephony protocol for both residential and commercial customers. ViaTalk, Corporate Information, https://www.viatalk.com/broadband_phone_corporate_info.htm (last visited July 8, 2021).

2 47 U.S.C §§ 255, 617. 47 CFR § 6.11. Sections 255 and 716 generally require equipment manufacturers and service providers to make their products and services accessible to and usable by individuals with disabilities. Manufacturers and service providers are also required to ensure that individuals with disabilities can access the information and documents associated with such equipment and services. We are addressing this informal complaint as a Commission because this is the first time the Commission has decided a case involving sections 255 and 716 of the Communications Act or section 6.11 of the Commission's rules.

3 See generally 47 U.S.C. §§ 225, 251, 255, 256, 617, 618, 619. See also S. REP. NO. 104-23, at 52 (1995) (noting that it hopes that this requirement will foster the design, development, and inclusion of new features in communications technologies that permit more ready accessibility of communications technology by individuals with disabilities); S. REP. NO. 111-386, at 1-2 (2010) (noting the purpose of the bill is...to ensure that individuals with disabilities are able to fully utilize communications services and equipment and better access video

(continued....)

services and equipment for persons with disabilities, to the extent that doing so is “readily achievable.”⁴ In 2007, the Commission held that interconnected VoIP service, as defined in section 9.3 of the Commission’s rules, is subject to the accessibility obligations of section 255 of the Act and its implementing rules.⁵

4. In 2010, noting the significant changes in the communications marketplace and use of technology, Congress amended the Act by passing the Twenty-First Century Video Accessibility Act (CVAA) to advance access to Advanced Communications Services to all Americans.⁶ Advanced Communications Services include interconnected VoIP service, non-interconnected VoIP service, electronic messaging service, and interoperable video conferencing service.⁷

5. Part 6 of the Commission’s rules implements section 255 of the Act and generally applies to manufacturers of telecommunications products and telecommunications service providers.⁸ Part 14 of the Commission’s rules implements the CVAA and generally applies to providers of advanced communications services and manufacturers of equipment used for advanced communications services.⁹

programming). *See generally Implementation of Sections 255 and 251(a)(2) of the Communications Act of 1934, as enacted by the Telecommunications Act of 1996*, WT Docket No. 96-198, Report and Order and Further Notice of Inquiry, 16 FCC Rcd 6417, 6430, para. 23 (1999) (“*Section 255 Report and Order*”) and *Implementation of Sections 716 and 717 of the Communications Act of 1934, as Enacted by the Twenty-First Century Communications and Video Accessibility Act of 2010*, CG Docket No. 10-213, *Amendments to the Commission’s Rules Implementing Sections 255 and 251(a)(2) of the Communications Act of 1934, as Enacted by the Telecommunications Act of 1996*, WT Docket No. 96-198, *Accessible Mobile Phone Options for People who are Blind, Deaf-Blind, or Have Low Vision*, CG Docket No. 10-145, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 14557, 14571, 14650, 14669, paras 36, 219, 262 (2011 *CVAA Implementation Order*).

⁴ S. REP. NO. 140-23, at 52 (1995) (noting that it hopes that this requirement will foster the design, development, and inclusion of new features in communications technologies that permit more ready accessibility of communications technology by individuals with disabilities).

⁵ *IP-Enabled Services; Implementation of Sections 255 and 251(a)(2) of The Communications Act of 1934, as Enacted by The Telecommunications Act of 1996: Access to Telecommunications Service, Telecommunications Equipment and Customer Premises Equipment by Persons with Disabilities; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; The Use of N11 Codes and Other Abbreviated Dialing Arrangements*, WC Docket No. 04-36, WT Docket No. 96-198, CG Docket No. 03-123, CC Docket No. 92-105, Report and Order, 22 FCC Rcd 11275, 11283, para. 16 (2007) (*VoIP Access Order* (requiring interconnected VoIP providers to comply with disability access requirements in Section 255 of the Act and the Commission’s corresponding rules). Section 9.3 of the Commission’s rules provides that an interconnected Voice over Internet Protocol (VoIP) service is a service that: (i) enables real-time, two-way voice communications; (ii) requires a broadband connection from the user’s location; (iii) requires internet protocol-compatible customer premises equipment (CPE); and (iv) permits users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network. 47 CFR § 9.3.

⁶ Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. No. 111-260, 124 Stat. 2751 (2010) (as codified in various sections of 47 U.S.C.) (CVAA). The law was enacted on October 8, 2010. *See also* Amendment of Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. No. 111-265, 124 Stat. 2795 (2010), also enacted on October 8, 2010, to make technical corrections to the Twenty-First Century Communications and Video Accessibility Act of 2010 and the amendments made by that Act. Hereinafter, all references to the CVAA will be to provisions of the CVAA as codified in the Communications Act of 1934, as amended, unless otherwise indicated. The Commission found that providers have an obligation to ensure that product upgrades or redesigns satisfy accessibility requirements, if achievable, even if accessibility was not achievable in the original version or model. 2011 *CVAA Implementation Order*, 26 FCC Rcd at 14609, para. 124. The Commission also held, however, that a provider need not recall or retrofit an existing product to make it accessible. *Id.* at 14609, para. 126.

⁷ 47 U.S.C. § 153(1).

⁸ 47 CFR § 6.1 *et seq.*

⁹ 47 CFR § 14.1 *et seq.*

Section 716(f) provided, however, that interconnected VoIP service offered on October 7, 2010 will continue to be subject to section 255 requirements and not the substantive accessibility requirements set forth in Section 716 of the CVAA.¹⁰ Section 717 of the Act requires the Commission to adopt rules that facilitate the filing of formal and informal complaints alleging non-compliance with Section 255, 716, or 718 and to establish procedures for enforcement actions by the Commission with respect to such violations, within one year of enactment of the law.¹¹ Sections 14.30 through 14.38 of the Commission's rules contain these requirements.¹²

6. Part 6 of the Commission's rules implements section 255 of the Act, and thus contains the applicable provisions. Section 6.5(b) of the Commission's rules requires service providers to "ensure that the service is accessible to and usable by individuals with disabilities, if readily achievable."¹³ Accessible means that "[i]nput, control, and mechanical functions shall be locatable, identifiable, and operable" by persons with specified disabilities.¹⁴ In its order implementing section 255, the Commission determined that "accessible to" generally refers to the incorporation of specific features in products and services that will allow people with disabilities to access those products.¹⁵ "Usable" means that "individuals with disabilities have access to the full functionality and documentation for the product, including instructions, product information (including accessible feature information), documentation, bills and technical support which is provided to individuals without disabilities."¹⁶ In adopting this definition, the Commission stated that the term "usable by" generally refers to the ability of people with disabilities to learn about and operate those features effectively.¹⁷

7. Section 6.11(a) of the Commission's rules provides that "[m]anufacturers and service providers shall ensure access to information and documentation it provides to its customers, if readily achievable. Such information and documentation includes user guides, bills, installation guides for end-user installable devices, and product support communications, regarding both the product in general and the accessibility features of the product."¹⁸ If the Commission determines that the service provider or manufacturer did not ensure access to information, including product support communications, the Commission will determine whether it was "readily achievable" for the manufacturer or service provider to make the product or service accessible to or usable by individuals with disabilities. The Commission will assess whether the action is "readily achievable" using the following factors: (1) the cost of the action; (2) the nature of the action; (3) the overall resources available to the entity, and (4) the operations of the entity including the composition, structure and functions of the workforce of such entity.¹⁹

¹⁰ 47 U.S.C. § 617(f); *see also* 2011 CVAA Implementation Order, 26 FCC Rcd at 14571, para. 36 (confirming that Section 255, and not Section 716, applies to telecommunications and interconnected VoIP services and equipment offered as of October 7, 2010).

¹¹ 47 U.S.C. § 618(a).

¹² 47 CFR §§ 14.30 – 14.38; *see also* 47 CFR § 6.16.

¹³ 47 CFR § 6.5(b).

¹⁴ 47 CFR § 6.3(a) (defining accessible); *see also* 47 CFR § 6.3(d) (providing disability shall mean a physical or mental impairment that substantially limits one or more of the major life activities of an individual; a record of such an impairment; or being regarded as having such an impairment).

¹⁵ *Section 255 Report and Order*, 16 FCC Rcd at 6430, para. 23.

¹⁶ 47 CFR § 6.3(l).

¹⁷ *Section 255 Report and Order*, 16 FCC Rcd 6417, 6430, para. 23.

¹⁸ 47 CFR § 6.11(a).

¹⁹ 47 CFR § 6.3(h)(1)-(3).

8. Commission rules provide a process for persons to file a formal or informal complaint against a manufacturer or service provider alleging violations of Section 255 or the CVAA.²⁰ Sections 14.34 and 14.35 of the Commission's rules provide the process and service requirements for filing an informal complaints.²¹ Section 14.36 describes the requirements for filing an answer to the complaint and for filing replies to the answer.²² Section 14.37 provides that the Commission will investigate the allegations in any informal complaint and, within 180 days of the complaint, issue an order finding whether the manufacturer or service provider violated the relevant statutory provision or rule, and provide a basis therefore, unless such complaint is resolved before that time.²³ If the Commission determines that there has been a violation, it may in such order, or in a subsequent order, (1) direct the manufacturer or service provider to bring the service, or in the case of a manufacturer, the next generation of the equipment or device, into compliance within a reasonable period of time, and (2) take other enforcement action that the Commission deems appropriate.²⁴ Our rules provide the manufacturer or service provider an opportunity to comment on the proposed remedial action before such action becomes final.²⁵ The Commission recognized that it had "considerable discretion to tailor sanctions or remedies to the individual circumstances of a particular violation," but also found that it could not impose monetary forfeitures against entities that do not hold a Commission authorization, without first issuing a citation.²⁶

B. Factual Background

9. ViaTalk began offering interconnected VoIP service in October 2005.²⁷ Cris Patterson (Patterson), a quadriplegic, had been a customer of ViaTalk for more than 10 years.²⁸ On May 2, 2020, Patterson contacted ViaTalk regarding problems with his interconnected VoIP service.²⁹ This contact launched a series of communications via email and ViaTalk's online ticketing system between Patterson and ViaTalk.³⁰ Early in these communications, through troubleshooting, ViaTalk sent Patterson a new adapter to resolve the interconnected VoIP service issue. By May 15, 2020, Patterson had made multiple requests for ViaTalk to give him a call to troubleshoot the problem he continued to have with its interconnected VoIP service, including installation of the adapter.³¹ Patterson specifically requested a call-back so that he could have someone present to assist him with installation of the adapter that ViaTalk sent, and with troubleshooting the persistent problem.³² There is no evidence in the record that ViaTalk

²⁰ 2011 CVAA Implementation Order, 26 FCC Rcd at Appendix B.

²¹ 47 U.S.C. § 618(a)(3)(A); *see also* 47 CFR §§ 14.34, 14.35.

²² 47 U.S.C. § 618(a)(4); *see also* 47 CFR § 14.36.

²³ 47 U.S.C. § 618(a)(3)(B); *see also* 47 CFR § 14.37(a).

²⁴ 47 U.S.C. § 618(a)(3)(B)(i); *see also* 47 CFR § 14.37(b)(2).

²⁵ 47 CFR § 14.37(c).

²⁶ Section 255 Report and Order, 16 FCC Rcd at 6464-65, para. 116.

²⁷ June 7 LOI Response; *see also* ViaTalk 4 – 000001. ViaTalk began offering VT Unlimited, in addition to other VoIP plans, on October 28, 2005.

²⁸ ViaTalk 5 – 000001 (providing that Patterson's account was created on July 18, 2008 and the name of the plan Patterson enrolled in was VT Unlimited). ViaTalk is aware that Patterson is a quadriplegic. Complaint at Support Log 2, May 6, 2010 12:07pm.

²⁹ Complaint at Support Log 2.

³⁰ Complaint at Support Log 2. Patterson notes, and call records submitted by ViaTalk substantiate, that Patterson's service was intermittent during May 2020, the period in question. Complaint at Support Log 2 and Complaint Response at XLJ-10663.

³¹ Complaint at Support Log 2. ViaTalk explains it provides a phone adapter that allows a customer's home phones to make phone calls. June 7 LOI Response.

³² Complaint.

ever called or followed up with Patterson to schedule the requested call during May 2020. In his May 15, 2020 ticket, Patterson also stated that he would file a complaint with the Department of Justice for discrimination with [sic] people with disabilities because the Company was allegedly denying a request for reasonable accommodation under the Americans with Disabilities Act.³³ The record lacks evidence that there was any communication from ViaTalk to Patterson between May 15 and May 27. On May 27, 2020, Patterson ported his number to another provider because he could not consistently make outgoing calls using ViaTalk's service.³⁴

10. Even though Patterson had ported his number to a new provider, he hoped to resume his ViaTalk service. On Oct. 7, 2020, Patterson contacted ViaTalk and requested that ViaTalk send a technician to his home to install the replacement adapter that ViaTalk sent to Patterson in May 2020.³⁵ ViaTalk declined this request.³⁶ On October 19, 2020, Patterson initiated a Request for Dispute Assistance (RDA) with the Consumer and Governmental Affairs Bureau's Disability Rights Office, a prerequisite to filing an informal complaint.³⁷ The parties were unable to reach agreement during the RDA process.

11. On February 24, 2021, Patterson filed an informal complaint (Complaint) with the Enforcement Bureau alleging violations of sections 255 and 716 of the Act.³⁸ The Complaint alleges that Patterson's interconnected VoIP service "is currently inaccessible" and that ViaTalk refused to call him to provide assistance to get his modem [adapter] reconnected after ViaTalk sent new equipment to him.³⁹ Patterson alleges that his "phone service was down and [ViaTalk] would not help fix it."⁴⁰ Patterson states that he wants "continued phone service from ViaTalk as I have had for 10+ years."⁴¹ He also said, "I paid for two years of service in advance. I want two years of service."⁴²

12. On March 24, 2021, ViaTalk filed its Response to the Complaint.⁴³ On May 13, 2021, the Enforcement Bureau issued a Letter of Inquiry to ViaTalk requesting additional information and supporting documentation about ViaTalk's interconnected VoIP services, and its customer and technical

³³ Complaint at Support Log 2.

³⁴ Complaint Response.

³⁵ Complaint Response.

³⁶ Complaint Response. Patterson contacted ViaTalk on October 6, 2020, requesting an accommodation under the American with Disabilities Act. *See* Complaint at Support Log 1. According to ViaTalk, Patterson failed to provide specificity as to the accommodation he sought. Complaint Response.

³⁷ 47 CFR § 14.32; *see also* Request for Dispute Assistance Form (filed Oct. 19, 2020). *See* 47 CFR § 14.34(b)(5).

³⁸ Complaint.

³⁹ Complaint. Although Patterson alleges that ViaTalk violated Section 6.11(a)(3) of the Commission's rules, we do not find that ViaTalk violated section 6.11(a)(3) of our rules because section 6.11(a)(3) only applies to manufacturers and ViaTalk is a service provider, not a manufacturer. Although the Complaint notes that ViaTalk sent Patterson equipment (an adapter) in an effort to resolve the problem, Patterson makes no assertion as to whether the equipment was working or would have resolved the problem; his substantive objection is that the Company did not arrange a time to discuss how to install the equipment and troubleshoot the service.

⁴⁰ Complaint.

⁴¹ Complaint.

⁴² Complaint.

⁴³ Letter from John Reyes, Vice President, ViaTalk, LLC to Telecommunications Consumers Division, FCC Enforcement Bureau (emailed on Mar. 24, 2021, 10:18pm). ViaTalk amended its Complaint Response on April 1, 2021. Letter from John Reyes, Vice President, ViaTalk, LLC to Telecommunications Consumers Division, FCC Enforcement Bureau (emailed on Apr. 1, 2021, 8:56pm) (Complaint Response).

support services.⁴⁴ The Enforcement Bureau requested supplemental information on June 4, 2021 and June 10, 2021. ViaTalk filed additional information and documents on June 7, 2021 and June 14, 2021.⁴⁵ ViaTalk made multiple arguments purporting to show that it was not in violation of sections 255 and 716.

13. ViaTalk disputes that it failed to meet its obligation to provide accessible service. First, ViaTalk asserts that it was not obligated to make its service accessible and usable because the Company qualifies for a small entity exemption.⁴⁶ Second, ViaTalk claims that the accessibility and usability requirements do not apply to the interconnected VoIP service at issue because its interconnected VoIP service offering predates the obligation to make Advanced Communications Services accessible and usable.⁴⁷ Third, ViaTalk asserts that its service was accessible to and usable by Patterson because Patterson accessed and used the service for many years.⁴⁸ ViaTalk states that it had provided a replacement adapter and the adapter was registering with ViaTalk servers.⁴⁹ Further, ViaTalk submits documentation showing that Patterson made 43 outgoing calls and received 74 incoming calls between May 13 and May 26, 2020. Fourth, ViaTalk claims that the problems Patterson was experiencing were not due to problems with ViaTalk's service. ViaTalk posits that the problems were instead caused by Patterson's ISP,⁵⁰ or were due to incompatibility with peripheral devices and specialized customer premises equipment, and should have been raised with the equipment manufacturers.⁵¹

14. ViaTalk also maintains that it met its obligation to ensure access to information it provides to its customers, including product support communications. First, ViaTalk states that its support staff can be reached via a toll-free number, a call back service, an online ticket support system, and via email.⁵² ViaTalk presents documentation of the customer/technical support ViaTalk provided to Patterson over the years.⁵³ Second, the Company defends its failure to call Patterson back by stating that the requests to schedule a specific time for assistance were made contemporaneously with Patterson's threats to take legal action.⁵⁴ The Company states that its "support representatives don't have authority or training to represent ViaTalk regarding legal matters."⁵⁵ ViaTalk states that it "would have made this

⁴⁴ Letter of Inquiry from Kristi Thompson, Chief, Telecommunications Consumers Division, FCC Enforcement Bureau, to John Reyes, Vice President, ViaTalk, LLC (May 13, 2021) (LOI).

⁴⁵ Supplemental Response to Letter of Inquiry from John Reyes, CEO, ViaTalk, LLC, to Federal Communications Commission, Enforcement Bureau (June 7, 2021) (June 7 LOI Response); Third Response to Letter of Inquiry from John Reyes, CEO, ViaTalk, LLC, to Federal Communications Commission, Enforcement Bureau (June 14, 2021) (June 14 LOI Response).

⁴⁶ Response to Letter of Inquiry from John Reyes, CEO, ViaTalk, LLC, to Federal Communications Commission, Enforcement Bureau (May 26, 2021) (May 26 LOI Response).

⁴⁷ June 7 LOI Response (providing documentation that the VoIP service at issue was available on or before October 7, 2010).

⁴⁸ June 7 LOI Response.

⁴⁹ June 7 LOI Response.

⁵⁰ June 14 LOI Response, Attachment G-00003.

⁵¹ June 14 LOI Response, Attachment G-00004.

⁵² June 7 LOI Response.

⁵³ June 14 LOI Response. ViaTalk provided documentation of technical support in many instances over a 12-year period, as well as an offer in October 2020 to troubleshoot the problem. June 14 LOI Response at VIATALK 9-000001 and VIATALK 9-000002.

⁵⁴ June 14 LOI Response.

⁵⁵ June 14 LOI Response; *see also* June 7 LOI Response (explaining that the stop in communication with Patterson was the result of his threat of imminent legal action and its policy is to cease communication if a customer threatens imminent legal action).

accommodation had the legal action statements [] not been made.”⁵⁶ Third, ViaTalk states that in October 2020, Patterson asked the Company to send a technician to his home to install the equipment.⁵⁷ ViaTalk represents that sending a technician was not “readily achievable,” and it provided some information to support that claim.⁵⁸

III. DISCUSSION

15. The Complaint raises two questions. First, did ViaTalk satisfy its obligation to provide accessible service pursuant to section 255 and section 6.5(b) of our rules? We conclude that it did; the record does not support a finding that ViaTalk’s service was inaccessible. Second, did ViaTalk satisfy its obligation pursuant to section 6.11(a) of our rules to ensure access to information, including product support communications, to individuals with disabilities? We conclude that it did not. ViaTalk was required to provide individuals with disabilities “access to information . . . it provides to its customers, if readily achievable.”⁵⁹ Under our rules, this “information” is defined to “include[] . . . product support communications.”⁶⁰ ViaTalk states that it provides callbacks to customers.⁶¹ Nevertheless, ViaTalk failed to call back Patterson, even though he made multiple requests for a call. The record shows that scheduling a call with Patterson was readily achievable for ViaTalk and hence, by failing to do so, ViaTalk violated its obligation to provide product support communications to Mr. Patterson.

16. *Obligation to provide accessible service.* Patterson’s Complaint alleges that his ViaTalk interconnected VoIP service stopped working.⁶² As an initial matter, it is unclear whether Patterson is contending that the interconnected VoIP service itself is not accessible to individuals with disabilities, or simply is claiming that the Company violated its obligation to provide access to product support communications, i.e., information. We believe that Patterson is making the latter argument, but find, in any case, that the record does not support a claim that the interconnected VoIP service was inaccessible to individuals with disabilities. Patterson had used ViaTalk’s interconnected VoIP service for more than a decade.⁶³ In fact, he would like to resume using ViaTalk’s interconnected VoIP service.⁶⁴ Patterson’s past use of the service along with his desire to resume the service supports a conclusion that ViaTalk met its obligation to provide accessible service.⁶⁵

17. Because we find that the interconnected VoIP service was accessible, we need not address all of ViaTalk’s defenses. However, we do address the Company’s arguments that it was not legally obligated to make its service accessible and usable. First, despite the Company’s claim that it is exempt from compliance with the accessibility requirements,⁶⁶ the small entity exemption that ViaTalk references has expired.⁶⁷ The small entity exemption relieved small entities that lacked the legal, technical, or financial ability to incorporate accessibility features, conduct an achievability analysis, or

⁵⁶ June 14 LOI Response.

⁵⁷ Complaint Response.

⁵⁸ Complaint Response.

⁵⁹ 47 CFR § 6.11(a).

⁶⁰ *Id.*

⁶¹ June 7 LOI Response.

⁶² Complaint.

⁶³ ViaTalk 5 – 000001.

⁶⁴ Complaint.

⁶⁵ Providers are obligated to make a service accessible, if readily achievable. 47 CFR 6.5(b); *see also Section 255 Report and Order*, 16 FCC Rcd at 6440, para. 49.

⁶⁶ May 26 LOI Response.

⁶⁷ 47 CFR § 14.4(c) (providing that the small entity exemption will expire no later than October 8, 2013).

otherwise comply with the requirements of sections 716 and 717 of the Act.⁶⁸ Even if the exemption had not expired more than 7 years ago,⁶⁹ that exemption would not have applied to ViaTalk because the exemption only applied to those services governed by section 716 of the Act, and ViaTalk's interconnected VoIP service is governed by the requirements of section 255 of the Act.⁷⁰ Second, ViaTalk erroneously claims that it "is only required to take accessibility into account in the design of products in [sic] services after January 30, 2012."⁷¹ The Commission extended the section 255 disability access requirements to interconnected VoIP services in 2007, and section 716(f) of the CVAA provided that interconnected VoIP service offered on October 7, 2010 will continue to be subject to section 255.⁷² Thus, ViaTalk's interconnected VoIP service is governed by section 255 and subject to the obligations thereunder.

18. *Obligation to provide access to information, including product support communications.* The record supports a finding that ViaTalk failed to ensure that individuals with disabilities had access to product support communications, as required by 6.11(a) of our rules, and that providing such access was readily achievable.⁷³ ViaTalk offers customers product support communications in a variety of ways, including a callback service through which a customer can request that ViaTalk return the call, rather than making the customer wait on hold.⁷⁴ Patterson attempted to use the Company's online ticketing system to get the information he needed, but because of his disability, he had difficulty using it.⁷⁵ In addition, due to his disability, Patterson needed to have an assistant present when he spoke to ViaTalk, so that the assistant could follow ViaTalk's guidance to restore Patterson's interconnected VoIP service.⁷⁶ As a result, Patterson asked ViaTalk to call him. This request was analogous to the callback service that ViaTalk provides its customers. Nonetheless, ViaTalk did not call Patterson back, nor did it schedule a call-back.⁷⁷ We thus find that ViaTalk did not "ensure access to information . . . it provides to its customers."⁷⁸

19. We find that providing access to the product support communications that Patterson requested, i.e., having the Company call him back at a specified time, was readily achievable. First, ViaTalk admits as much.⁷⁹ Second, applying the factors necessary to determine achievability, we conclude that ViaTalk could easily have provided Patterson access to product support communications

⁶⁸ 2011 CVAA Implementation Order, 26 FCC Rcd at 14677, para. 279.

⁶⁹ Pursuant to section 14.4(c), the exemption would expire no later than October 8, 2013. See 47 CFR § 14.4(c).

⁷⁰ 47 CFR § 14.4(c); see also 47 U.S.C. 617(h)(2) (limiting the applicability of this exemption to section 716).

⁷¹ Section 6.7 of the Commission's rules provides the product, design, and evaluation requirements for entities governed by Section 255 of the Act. 47 CFR § 6.7. This rule became effective on January 28, 2000. 64 FR 63235 (1999).

⁷² 47 U.S.C. § 618(f); see also 2011 CVAA Implementation Order, 26 FCC Rcd at 14571, para. 36 (confirming that Section 716(f) means that Section 255, and not Section 716, applies to telecommunications and interconnected VoIP services and equipment offered as of October 7, 2010).

⁷³ 47 CFR § 6.11(a).

⁷⁴ June 7 LOI Response.

⁷⁵ Complaint at Support Log 2.

⁷⁶ Complaint and Complaint at Support Log 2.

⁷⁷ ViaTalk's assertions that it provided support to Patterson on many occasions over the years is not pertinent to whether it provided the required support between May 2 and May 27, 2020.

⁷⁸ 47 CFR § 6.11(a).

⁷⁹ June 14 LOI Response ("ViaTalk makes no assertion that scheduling a phone call to speak to a representative of Mr. Patterson was not readily achievable").

that it apparently routinely provides to other customers.⁸⁰ Calling Patterson back at a designated time would have imposed minimal, if any, additional costs on the Company, and the Company makes no claim to the contrary. Because ViaTalk offers a callback feature, the nature of the request is consistent with feature that the Company already provides to customers. Further, there is no evidence to suggest, and the Company has not argued, that ViaTalk lacked the resources to provide access to the product support communications that Patterson requested.

20. ViaTalk admits that it could have called Patterson back, but chose not to. ViaTalk claims that its inaction was justified because Patterson had threatened legal action against the Company.⁸¹ ViaTalk states that its policy is that customer service representatives are not trained to address legal claims, and once a customer has threatened legal action, only ViaTalk's counsel can handle the matter.⁸² We reject this assertion. We do not believe that ViaTalk's obligation to comply with section 255 and the Commission's rules were eliminated because Patterson threatened legal action, and the Company provides no legal support for that claim. In addition, Patterson began requesting a call back before he asserted that he might file a legal claim, and ViaTalk offers no explanation for why it refused to provide a call back when Patterson first requested one.

21. ViaTalk contends that in October 2020 (prior to and as part of the RDA process) Patterson asked the Company to send a technician to Patterson's home in Florida to install the adapter. ViaTalk alleges that satisfying this request was not readily achievable.⁸³ Because the Complaint did not include this request, we see no need to determine whether sending a technician to Patterson's home is "readily achievable." Patterson's subsequent request for ViaTalk to send a technician to his home does not excuse ViaTalk's failure to call Patterson back, as requested.

22. ViaTalk suggests that Patterson's service was working, and that, to the extent that Patterson was unable to make outgoing calls, the problem was with his Internet Service Provider, or with peripheral equipment, rather than the interconnected VoIP service.⁸⁴ The record does not permit us to determine the source of the problem. We find only that ViaTalk failed to meet its obligation to provide product support communications, and that finding is independent of whether or not the underlying problem was with the service. In fact, had ViaTalk met its obligation to provide product support communications by contacting Patterson, the parties might have been able to reach a conclusion about the cause of the problem, as well as a solution.

23. Finally, we note that the complaint alleges a violation of section 6.11(a)(3) of the Commission's rules.⁸⁵ However, that provision applies only to manufacturers, and not service providers such as ViaTalk.⁸⁶ Thus, we do not find that ViaTalk violated section 6.11(a)(3) of our rules.

24. We find that ViaTalk violated section 6.11(a) of the Commission's rules by failing to ensure that individuals with disabilities have access to information, including product support communications, that ViaTalk provides to its customers.

⁸⁰ 47 CFR §§ 6.3(h), 6.5 (b).

⁸¹ Complaint Response at XLJ-10663. The record shows that Patterson threatened to file a complaint with the Department of Justice and to contact the FCC. There is no additional information in the record to substantiate the threat of any other type of legal action. We also note that it is not unusual for customers who are dissatisfied with a situation to threaten legal action against a company.

⁸² Complaint Response. We note that the record does not reflect ViaTalk's counsel ever became involved. Instead, it appears that ViaTalk simply waited to receive some type of legal action from Mr. Patterson.

⁸³ Complaint Response.

⁸⁴ June 7 LOI Response.

⁸⁵ Complaint.

⁸⁶ 47 CFR § 6.11(a)(3).

IV. PROPOSED REMEDY

25. Section 717 of the Act authorizes the Commission to direct a service provider to bring its service in compliance if the Commission determines that the service provider has failed to comply with section 255 of the Act.⁸⁷ In accordance with our rules, we propose remedies to ensure that ViaTalk complies with the requirements of section 255 of the Act and section 6.11(a) of the Commission's rules, and that it implements system-wide improvements to ensure that, going forward, all individuals with disabilities will receive prompt and effective responses to concerns about their service. Because ViaTalk does not hold a Commission authorization, we may not propose a monetary forfeiture as part of this order, but we are not precluded from doing so in a separate proceeding.⁸⁸

26. Pursuant to section 14.37(c) of our rules,⁸⁹ we provide ViaTalk fourteen (14) days from the date this Order is released to comment on the proposed remedies. Following that opportunity to comment, we delegate to the Enforcement Bureau authority to issue an order, consistent with our findings herein, setting forth the remedy (Remedy Order).

27. We propose to direct ViaTalk to contact Patterson within 14 days of the release date of the Remedy Order to schedule a day and time for a phone call to work with Patterson and his representative to provide information and guidance on restoring Patterson's interconnected VoIP service, including communication concerning the adapter. We also propose to direct ViaTalk to conduct the call with Patterson and his representative within 28 days of the Remedy Order. In addition, we propose to direct ViaTalk to establish, within 30 days of the Remedy Order, processes to ensure that (1) complaints by individuals with disabilities are referred promptly to a ViaTalk representative authorized to resolve the matter and (2) ViaTalk documents all efforts to resolve such complaints and retains such documents for twenty-four (24) months.

V. ORDERING CLAUSES

28. Accordingly, **IT IS ORDERED** that, pursuant to sections 255 and 717 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 255, 618, and section 14.37 of the Commission's rules, 47 C.F.R. § 14.37, the complaint filed against ViaTalk, LLC IS GRANTED to the extent described herein.

29. **IT IS FURTHER ORDERED** that, pursuant to section 717 of the Communications Act of 1934, as amended, 47 U.S.C. § 618, and section 14.37 of the Commission's rules, 47 C.F.R. § 14.37, the Commission affords ViaTalk, LLC 14 days from the date of this Order to comment on the proposed remedies.

30. **IT IS FURTHER ORDERED** that this Order is effective upon release.

31. **IT IS FURTHER ORDERED** that a copy of this Order be served sent by first class mail and certified mail, return receipt requested, to John Reyes, Vice President, ViaTalk, LLC, 21 Corporate

⁸⁷ 47 USC § 618(a)(3)(B). *See also* 47 CFR § 14.37(b)(1).

⁸⁸ *Section 255 Report and Order*, 16 FCC Rcd at 6464-65, para. 116.

⁸⁹ 47 CFR § 14.37(c).

Drive, Suite 203, Clifton Park, NY 12065 and via email to John Reyes, Vice President, ViaTalk LLC at john.reyes@hostrocket.com.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary